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IN THE SUPREME COURT OF THE UNITED STATES
MICHAEL RODAK, JR., CLERK

OCTOBER TERM 1978

NO. 79-108

MILA K. CAMERON, Petitioner

VS

HON. JOE R. GREENHILL, ET AL.,
Respondents

REPLY TO OPPOSITION

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1978

MILA K. CAMERON,
Petitioner

VS NO. 79-108

HON. JOE R. GREENHILL, ET AL,
Respondents

REPLY TO RESPONDENT'S BRIEF
IN OPPOSITION

TO THE HONORABLE COURT:

ONE: INTRODUCTION

A.

This is an appeal from the action of the Judicial hegemony of Texas (Art. II, Sec. 1 and Art. V, Texas Constitution) which began in Cause No. 280,298 in the 53rd District Court of Travis County, Texas (Hon. Pete Lowry, Judge Presiding); was appealed to the Court of Civil Appeals for the Third Supreme Judicial District sitting in Austin, Travis County, Texas,

whose opinion (as distinguished from their judgment) can be found in 577 SW(2) 389 (decided 2/21/79, reh. dend. 2/28/79); and thereafter appealed to the Texas Supreme Court whose decision can be found in 582 SW(2) 775 (decided 5/20/79, reh. dend. 6/27/79).

B.

(1) References to Pet/C p. ____ are to Petitioner's Petition for Writ of Certiorari filed herein on 7/23/79.

(2) References to Opp. p. ____ are to Respondents' Brief in Opposition served on the undersigned on 8/15/79.

C.

The respondents are the same persons who form the Texas Supreme Court; BUT they are not (and never were) sued:

1. in their individual capacities;
2. in their "official" capacities as members of the TEXAS SUPREME COURT;
3. in their "official" capacity as members of the Texas Constitutional Civil Court of last resort (Art. V, §§ 3 and 4, Texas Constitution); nor
4. in their judicial capacity.

They were, quite plainly being:

"(b)...sued in their capacity as the regulatory or administrative head of the Legislatively controlled profession of law.

(d) The RESPONDENTS ARE NOT being sued herein in their individual capacities, nor in their capacities as the Constitutionally created Supreme Court (qua Court) of the State of Texas; nor in their capacity as the Judicial Arm of the three branches of Government."

(This is quoted from Paragraph THREE of Plaintiff's Original Petition in this case.)

D.

In this case, the Attorney General represented the above described capacitorial standing of the Respondents, and - at least nominally - the Attorney General purported to represent "the Supreme Court". The Attorney General will be referred to as "AG" for brevity.

TWO: CONSTITUTION AND STATUTES, ETC.

U. S. CONSTITUTION

This case involves the Due Process clause of the 14th Amendment to the Constitution of the United States.

TEXAS CONSTITUTION

This case involves:

Art. II, § 1
Art. V, § 1
Art. V, § 3; and
Art. V, § 4

of the Texas Constituion.

STATUTES

This case involves:

Art. 6252-13a TCS (The APA);
and
Art. 320a-1 TCS (The Texas
Bar Act).

(TCS means Texas Civil
Statutes.)

RULES

This case involves:

Texas Bar Rules, Art. IV, §4
and
Texas Bar Rules, Art. IV, §5.

THREE: QUESTIONS PRESENTED

The AG, in his first question (Opp. p. 2), misconstrues the problem raised in Petitioner's first question (Pet/C p. 3). Rephrased, the AG's first question is put thus:

Is the APA applicable to a "decision" of a State Court?

The answer to this question is obviously "NO" and Petitioner will concede this.

And secondarily:

Is the APA applicable to rule-making by a State Court?

The answer is again obviously "NO". And Petitioner not only will concede that, but already has done so (Pet/C p. 16).

(That Courts, qua court, can make "rules" for their own operation; or that a Court, qua Court, can make "procedural rules" when such power is properly delegated, is so patent that authoritative decisions would be "icing" and/or certainly surplusage.)

The question here is:

Whether the APA is applicable to administrative rules made by the members of the Supreme Court who have been delegated the chore of regulating and/or administering the statewide profession of the practice of law (a profession affected with a public interest); and

What is the only manner such delegation is permissible (lawful or constitutional)?

Petitioner's contention from the Trial Court to this Court is:

The members of the Texas Supreme Court CAN as regulatory and/or administrative head control the Profession of Law in compliance with the Texas Bar Act; BUT

NOT as a Court; because under
the LAW OF TEXAS

(which must control)

a Court cannot be delegated such
administrative powers.

The AG has refused:

To recognize this question;

But more importantly, the AG has
refused to meet it and attempt to
answer it.

(NOTE: Logically it becomes rather
easy to "beat" a protagonist if, as
the opponent, one is permitted to
"frame" the protagonist's issues.
Although a valid dialectic tool - if
undetected and successful - it fails
rational, reasonable or logical
scrutiny.)

The AG presents the second question
(re disqualification) correctly (Opp. p.2
and Pet/C p. 3).

FOUR: THE ARGUMENT AND ANSWER

A.

The AG argues:

(1) The State Court system has
construed the "court" exception
to "state agency" (see §3[1] APA)
to include "justices of courts";

hence the Petitioner's Writ of
Certiorari should be denied since
the AG's question is settled by
State Court interpretation.

(2) The Petition for Writ of
Certiorari should be denied be-
cause the Texas Court System has
no jurisdiction:

Petitioner sued under the APA;
and

The APA excepts "courts" from
its operation;

Hence, without jurisdiction,
no Federal Question can have
been presented for consider-
ation.

In support of these arguments, the
AG says:

(a) Petitioner never raised such a
Constitutional challenge to the scope
of the "court" exception to the APA;
and

(b) Hence the Texas Judicial hegemony
was never given a chance to answer it.

(c) The Petition for Writ of Certiorari
should be denied because it presents
no conflict with any other decision.

B.

(1) That State Courts interpret the U. S. Constitution, Statutes, Ordinances, Administrative Rules and Regulations or applications of any of the above is always the basis for an appeal or a petition for writ of certiorari to this Court. Accordingly, the fact that Texas gave a judicial interpretation of the "court" exception to "state agency" of the APA is not a reason for denying the Petition for Writ of Certiorari, but rather the issue raised to give substance to the Petition for Writ of Certiorari in this Court.

(2) Furthermore, in conceding, as he did here, that the State Court did rule that the "court" exception included justices and judges regardless of how they acted or in what capacity they acted, the AG impliedly agrees that the issue was before the Texas Judicial hegemony.

(3) Again, the AG misses the point. To determine jurisdiction, the Texas Court System had to:

(a) assume the facts in Plaintiff's Original Petition were true; Vol. 2, McDonald: TEXAS CIVIL PRACTICE, p.178, §7.07, Ftnt. #18; and

(b) determine the scope of the "court" exception to "state agency" in §3[1] of the APA.

For Petitioner claimed, in her application to the Respondents for administrative relief that:

(a) Respondents (Defendants below) were not acting as a Court; and

(b) If not, then they were subject to the APA; and

(c) If they were, Art. 320a-1 TCS was an unconstitutional delegation of power to the Court.

(All of the above was set out in Petitioner's application for administrative relief made an Exhibit in Plaintiff's Original Petition in this case.)

Without a determination of these questions - the very ones now before this Court - no question of "jurisdiction" could have been (or was) answered by either:

The Respondents, acting administratively;

The Trial Court;

The Court of Civil Appeals; or

The Texas Supreme Court, acting as a Court.

It seems somewhat amiss of the AG to say that the question presented here was

not before the Courts below since such Courts considered it and disposed of it.

"It is not essential that the judgment in express terms specifically dispose of each issue. That it does dispose of a particular issue may be inferred from other provisions thereof, provided such inference follow as a necessary implication."

TRAMMELL vs ROSEN,
157 SW 1161 (Sup. Ct. 1913)

(4) Again it seems strange that the AG says that these questions were not before the Trial Court since he filed a MEMORANDUM in that Court dealing with the questions raised. Furthermore, in the "Statement of Facts" which is nothing more than the legal arguments made to the Trial Court, the AG himself spent from pages 2 through 8 arguing the very questions he now says were not before the Trial Court.

(5) Again the Texas Supreme Court admitted that it did not act as a Court when it rejected its subordination to the APA:

"It is the position of the Court that its regulation of the practice of law, while not involving the decision of a case or controversy, nevertheless is a judicial function to which the Administrative Procedures and Texas Register Act (Article 6252-13a, V. T. C. A.) does not apply."

See Appendix I of the Petition for Writ of Certiorari filed herein.

In short, the implication is plain. It was acting administratively.

(In support of this, see STATE vs SEWELL, 487 SW[2] 716 [Sup. Ct. 1972], a lawyer-discipline case, where the Court noted that it was charged with "making rules and regulations" for disciplining lawyers, and it had "professional policing duties". See also TEXAS HOUSE JOURNAL PROCEEDINGS, Wednesday, Jan. 31st, 1979, Fourteenth Day, where the Chief Justice of the Texas Supreme Court told the Texas Legislature that the Court had "many administrative duties" re the governance of the profession of law.)

(6) BUT the Texas Supreme Court has consistently held that when Courts act administratively, they do not act judicially:

JONES vs MARCH	224 SW(2) 198
STATE vs BUSH	253 SW(2) 269
STONE vs LCB	417 SW(2) 385

Cf. the Court of Criminal Appeals holding in DAVENPORT vs STATE, 574 SW(2) 73 (1978).

(The Texas Court of Criminal Appeals is the co-equal sister Court of the Texas Supreme Court; see Art. V Texas Constitution. When the Court of Criminal Appeals rules first - either on a criminal or civil matter - the Texas Supreme Court honors such ruling as necessary to the proper administration of justice, SHRADER vs RITCHEY, 309 SW[2] 812 [Sup. Ct. 1958].)

In DAVENPORT, the Court of Criminal Appeals, after citing cases to the effect that "res judicata" did not apply to administrative decision-making, held that supervising probationers was an administrative function and not judicial; and "revocation" was administrative "in nature" and that "res judicata" did not apply.

ACCORDINGLY, it is clear that administration by Courts

(other than Court administration; i.e. dockets, dress, criminal contempt, etc.)

is not a judicial function (Cf. MUSKRAT, 55 LE 246).

(7) BUT in this case, the Court of Civil Appeals held that regardless of in what capacity a Court acts, it is excepted from the APA for not being a "state agency" 577 SW(2) 589, and the Application for Writ of Error to the Texas Supreme Court was simply "REFUSED", which means that the Texas Supreme Court agreed with what the Court of Civil Appeals said and did; see Rule 483, TRCvP.

(8) A Court can only be a "Court" when it sits at a given time and place to decide a case or controversy.

(This is the LAW OF TEXAS on the point. See Vol. 1, McDonald: TEXAS CIVIL PRACTICE, p. 22, §1.02.)

(9) Judges are not Courts. One is an officer, the other a judicial assemblage, *ibid.* Only when a Judge sits as a Court may he be called a "court" - otherwise, he is not. See HENDERSON vs BEATON, 52 Tex 291 (1879); HENNE & MEYER vs MOULTRIE, 77 SW 607 (Sup. Ct. 1903); PITTMAN vs BYARS, 101 SW 789 (Sup. Ct. 1907); COUTURIE vs CRESPI, 131 SW 409 (Sup. Ct. 1910). See discussion in Ex Parte LOWREY, 518 SW(2) 897 (CCA. Beaumont, 1975, No Writ History). Cf. 20 AJ(2) Cts. §1; 43 AJ(2) Judges §3; 43 ALR 1516, 1558, *supp.* in 18 ALR(3) 572, 589.

(10) Now if a Court does not function judicially, if it acts administratively, then it can only be that its judges or officers do the administration, not the Court, *qua* court.

(11) And unless such judge (or judges) are specifically exempt from the APA, the APA governs.

(Ex.g., Art. 2328a TCS creates the TEXAS CIVIL JUDICIAL COUNCIL, an administrative body charged with the study of courts; rules; practices; discretionary powers of courts in order to curtail inefficiency; with receiving suggestions re faults of the administration of justice; to gather statistics; to report; to investigate matters sent them by the Courts or Legislature; and hold meetings [Sec. 5].

The Chief Justice of the Texas Supreme Court, two Judges of Court of Civil Appeals level, two presiding Judges of administrative districts; the Chairman and immediate past chairman of the Senate Jurisprudence Committee, the Chairman and immediate past chairman of the House Judicial Committee are on the Council [Sec. 3]. In addition, seven members of the Bar and two non-licensed laymen make up the Council [Sec. 4].

This Council is subject to the APA despite its constituency of five Judges.)

(12) The conflict is now patent. The LAW OF TEXAS is that judges, if they are not acting as courts, can be and are subject to the APA when acting administratively. The LAW OF TEXAS is clear that administrative duties cannot be given to the COURTS, qua Courts, unless the same is Constitutionally imparted to them. Ex Parte HUGHES, 129 SW(2) 270 (Sup. Ct. 1939), and In Re HOUSE BILL #537, 256 SW 573 (Sup. Ct. 1923).

(The EICHELBERGER vs EICHELBERGER case, 582 SW[2] 395 [Sup. Ct. 1979] is an amorphism.

A. It dealt with the effects of HISQUERDO vs do, 59 LE[2] 1 on Texas law.

B. The Discussion of jurisdiction by the Court was unnecessary since the Texas Supreme Court had jurisdiction under Art. 1728[6] TCS and their subordination to the rulings of this Court, EMMONS vs PACIFIC INDEM. CO., 208 SW[2] 884 [Sup. Ct. 1948]. Cf. LANGDEAU vs REP. NAT. BK., 341 SW[2] 161 [Sup. Ct. 1961], reversed by 9 LE[2] 523; cf. Art. VI US Constitution.

C. EICHELBERGER was handed down on 5/23/79, reh. dend 7/11/79 while this case was pending.

D. None of the dicta in EICHELBERGER is apposite to this case and the case itself deals with divorce matters.

E. Ftnt. #1, which deals with "inherent powers", is inapposite also as a reading of the cases will attest - they [like Art. 1911a TCS cited therein] deal with "inherent powers" of individual courts to regulate the practice of law before such courts; they do not deal with "inherent powers" of the Supreme Court to control the statewide profession of law.)

C.

Petitioner:

(1) Does not deny the Legislative power to control the profession of law; see GOLDFARB vs VA. BAR, 44 LE(2) 572 (1975) and LEIS VS FLYNT, 58 LE(2) 717 (1979) where it was said:

"The States prescribe the qualifications for admission to practice and the standards of professional conduct."

(2) Does not deny that the Legislature can delegate such control to the nine justices that are identified as being the Texas Supreme Court.

But Petitioner:

(1) Does deny that the Legislature has power to confer the control of the statewide practice of law on the Texas Supreme Court (qua Court).

(2) Does deny the power of the Texas Supreme Court (qua Court) to pass and impose a RULE OF SANCTION on Petitioner for failure to pay the special assessment set out in the Pet/C p. 14 and Appendix D and F.

Petitioner sought the only pre-deprivation relief she had; one given her by the State of Texas - BUT, she was denied it by the Texas Judicial hegemony because they said the action arose under the APA and, as Courts, they were not subject to the APA. To do this, they had to find that:

(1) The legislative delegation under Art. 320a-1 TCS was to the Court qua court;

(2) For only then would the Texas Supreme Court not be within the APA.

(It is pertinent to note here that the LAW OF TEXAS is clear on Statutory interpretation and construction. First, the Plain Meaning Rule obtains, Ex Parte ROLOFF, 510 SW[2] 913 [Sup. Ct. 1974]. Second, all statutes are to be presumed constitutional, SMITH vs DAVIS, 426 SW[2] 827 [Sup. Ct. 1968]; ALOBALDI vs STATE, 443 SW[2] 440 [Ct. Crim. App. 1968], cert. d. 21 LE[2] 281 and the more recent case of ELY vs STATE, 582 SW[2] 416 [Ct. Crim. App. 1969]. Third, only a constitutional construction of a statute will be sustained [honored] by Texas Courts, McKINNEY vs BLANKENSHIP, 282 SW[2] 691 [Sup. Ct. 1955]; ALOBALDI, supra; and ELY, supra. See also 53 TJ[2] 225 and 277, Stats. Secs. 158 and 184.)

D.

Again, the AG dissimulates when he says that Petitioner challenges "the legality of such fee" and therefore, this Court's prior rulings on the validity of BAR control disposes of the questions.

The Petitioner does not challenge the validity of the fee per se.

(In her original request for administrative relief and her ORIGINAL PETITION, one claim was the invalidity of the fee, but this point

rapidly evaporated. The main point made clear at pages 36-37 of the Statement of Facts and quoted at Appendix L of the Pet/C was the point made in the Pet/C and here.)

The Petitioner does challenge the Texas Supreme Court's RULE OF SANCTION, both as to its inception and as to its imposition.

Petitioner made this contention before the Texas Supreme Court when she applied for administrative relief; in her Original Petition before the Trial Court; in her Appellant's Brief before the Court of Civil Appeals; and in her Application for Writ of Error before the Texas Supreme Court.

Petitioner was denied a right legislatively given her which was entitled to enforcement, LEIS, supra, and cases cited at 59 LE(2) p. 721. She brought the matter up properly and exhausted her state routes. If the cases between DUNCAN vs McCALL, 35 LE 219 (1891) through MOORE vs SIMS, 60 LE(2) 994 (1979) mean anything, abstention is not applicable since the Judicial hegemony of Texas had their chance, but failed to afford Petitioner a full and fair adjudication (cf. Ex Parte HAWK, 88 LE 572 [1944]).

E.

Which brings us to the teachings of In Re MURCHISON, 99 LE 942 (1955).

(1) The Texas Supreme Court in 582 SW(20 775 answered Petitioner's request for a fair (due process) non-polluted Court by measuring themselves against their prior embraced duty-to-sit rule.

(Duty-to-sit unless barred by Statutory or Constitutional inhibitors.)

(2) Both the inception and imposition of the RULE OF SANCTION began with the same NINE JUSTICES administratively that eventually ruled on it judicially.

(3) For any judge or justice to act in one capacity and then rule on that action judicially is contrary to the teachings of MURCHISON.

(4) Neither WITHROW vs LARKIN, 43 LE(2) 712 (1975) nor HORTONVILLE vs ED. ASSN., 49 LE(2) 1 (1976) dealt with this question. Both cases dealt with pre-factual-pollution of an Administrative Board before quasi-

adjudicative action by the same administrative board. They did not deal with judicial appellate hearings by the same people who ruled adjudicatively as an administrative board.

(5) MURCHISON dealt with judicial action by the same judge who acted as a grand jury.

(6) MURCHISON is the same breed of case as JOHNSON vs MISSISSIPPI, 29 LE(2) 423 (1971) and the cases it cites (Judicial action by a judicial victim of contumacy); and WARD vs MONROEVILLE, 34 LE(2) 267 (1972) (judicial action by Mayor responsible for City's income).

(7) Fairness of adjudication is essential to due process and an "unbiased judge" is essential to due process. But "to perform its (fair trial's) high function is the best way 'justice must satisfy the appearance of justice' Offutt v. United States, 348 US 11, 99 Led. 11, 75 S Ct 11." MURCHISON, supra.

(8) Here the Texas Supreme Court ruled as an administrative body that the courts were not subject to the

APA. This was appealed - as the Petitioner had the legislatively given right to do - to the Court System of Texas. Through this System the appeal eventually came to the same body (with different robes) for a judicial decision.

(9) In the interest of the appearance of justice (if not for the interest of making their own administrative ruling "good"), the Texas Supreme Court should have disqualified themselves - BUT, they did not - thereby denying Petitioner due process of law.

THE PRAYER of the Petitioner in her Application for Writ of Certiorari is hereby renewed.

RELIEF IS RESPECTFULLY
PRAYED.

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